

1 they disagreed with either your father's or your own
2 religious beliefs. Is that correct?

3 A No, sir. I didn't say anything of the kind.

4 JUDGE LUTON: That's fine. Stop.

5 BY MR. ALPERT:

6 Q Maybe I misheard you. Do you have any ties
7 whatsoever to Blackfoot, Idaho currently?

8 A What do you mean by ties?

9 Q Family, friends, property, anything?

10 A I visited there, met some people, community
11 leaders and so forth.

12 Q But nothing that ties you down there or
13 anything of that sort right now?

14 A I have no family or friends there other than
15 the people I've met when I visited.

16 Q Okay. Assuming you get this grant do you have
17 any plans right now to only own this property for a
18 finite period of time?

19 A No, I have no plans to sell it if that's what
20 you mean.

21 Q That's what I meant. And in your testimony
22 you say that you intend to establish a domicile in
23 Blackfoot. Is that correct?

24 A Yes.

25 Q Do you intend to maintain any other residences

1 anywhere else in the country at the time that you have
2 your domicile in Blackfoot?

3 A No, I intend to live in Blackfoot.

4 Q No other residences anywhere else?

5 A No.

6 Q And it's your intention to, for all intents
7 and purposes, for the foreseeable future to live there
8 forever?

9 MR. FRIEDMAN: Objection, Your Honor. Forever
10 is irrelevant.

11 MR. ALPERT: Your Honor, I disagree because
12 the Commission's policy is that integration proposals
13 should be on a permanent basis. Permanent is equated, I
14 believe, to forever.

15 JUDGE LUTON: I think an indefinite period of
16 time would be enough. I don't think he should commit
17 himself to forever living in any one place. If you want
18 to ask the witness whether he intends to stay in
19 Blackfoot for an indefinite time, that's okay.

20 BY MR. ALPERT:

21 Q Do you intend to live in Blackfoot for an
22 indefinite period of time?

23 A Yes.

24 Q Can you foresee any circumstances under which
25 you would leave? For instance, buying another broadcast

ATTACHMENT 6

Richard P. Bott, II
MM Docket No. 87-223
File No. BPH-850711MM

Bott Exhibit No. 4

BIOGRAPHICAL STATEMENT OF RICHARD P. BOTT, II

My name is Richard P. Bott, II. I am currently a Vice President and a director of Bott Broadcasting Company, Independence, Missouri. I hold similar positions with the related companies of Victory Communications, Inc. and Bott Communications, Inc..

I am a citizen of the United States and I have lived at 8603 Buckingham Lane, Kansas City, Missouri, for approximately the past four years. If my application is granted, I will move to and make Blackfoot, Idaho my domicile.

I will serve, on a full-time basis of at least 40 hours per week, as General Manager of my proposed station.

I graduated with honors from Bob Jones University in Greenville, South Carolina, in 1977. I received a Bachelor of Science Degree. I majored in Business Management and minored in Radio and Television. In 1981, I received a Masters Degree in Business Administration from the Graduate School of Business Administration of Harvard University in Cambridge, Massachusetts. During my MBA studies, I undertook a research project concerning the radio broadcasting business.

My broadcast experience dates back to my high school days. From 1970-73, I worked afternoons at Station KCCV(AM), Independence, Missouri, as an announcer and program producer. I

was producer of the weekly radio program "Teen Tempo." At Bob Jones University, I worked at campus Station WBJU^(4m)~~(LA)~~ from 1974-77. At the station, I was in charge of promotions, programming, and advertising.

For two years, from 1977-79, I was General Manager of Media Management Associates, an advertising agency in South Carolina. After spending the next two years at Harvard University, I returned to radio as General Manager for Station WFCV(AM), Fort Wayne, Indiana, for approximately a six-month period in 1981 and 1982.

In 1982, I joined Bott Broadcasting Company ("BBC") as Vice President for Sales and Marketing. In 1984, I became Vice President of BBC. I work on a full-time basis of at least 40 hours per week at BBC handling administrative matters for BBC and its associated companies' radio stations. My principal responsibility has been to ensure that the day-to-day activities of the stations are carried out in an effective and profitable manner. My managerial duties include a broad range of areas that I am personally in charge of and also some matters that I share with the President of BBC.

The duties that tend to be my principal ones are in supervising the activities of the individual station general managers, handling the sale of national advertising time on the stations, monitoring the financial conditions of the corporation and its stations, and ensuring that our business plan is met.

I am involved in the Independence, Missouri Chamber of Commerce as well as church groups and other community and civic organizations.

The chance to build, nurture, and develop my own radio station business is one that I have sought since my business school days. While I will remain an officer and director of BBC and its associated companies, as well as owning the Central Valley station, I will treat them as matters of secondary importance. I expect that BBC will hire someone to handle the duties I have been responsible for and that my only contact with BBC will be occasional board of directors meetings. As for the Central Valley station, I will employ a general manager for all day-to-day activities and will limit my involvement to reviewing his work from my Blackfoot home and office. The FM station at Blackfoot will, as a result, be my principal endeavor.

Richard P. Bott, II
MM Docket No. 87-223
File No. BPH-850711MM


Bott Exhibit No. 4
Page 4

DECLARATION

I, Richard P. Bott, II, declare under penalty of perjury,
that the information contained in the foregoing exhibit is true
and correct, to the best of my knowledge and belief.

Further Declarant sayeth not.

Executed at Collierville, TN. on the 20th day of
~~Blackfoot, Idaho~~
November, 1987.


Richard P. Bott, II

ATTACHMENT 7

BEFORE THE
Federal Communications Commission

WASHINGTON, D. C. 20554

In re Applications of)	MM Docket No. 87-223
RICHARD P. BOTT, II)	File No. BPH-850711MM
RADIO REPRESENTATIVES, INC.)	File No. BPH-850711MO
CLARE MARIE FERGUSON)	File No. BPH-850712MS
For Construction Permit for)	
a New FM Station in)	
Blackfoot, Idaho)	

To: Honorable Edward Luton
Administrative Law Judge

PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW OF RICHARD P. BOTT, II

Barry A. Friedman
Michael Drayer
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Suite 300
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February 8, 1988

quantitative participation. See Alexander S. Klein, Jr., supra, 86 FCC2d at 424-25; Jarad Broadcasting Company, Inc., supra, 1 FCC Rcd. 181.

(1) Richard P. Bott, II

70. Richard P. Bott, II, will be permanently integrated into the day-to-day operation and management of his proposed station on a full-time basis of at least 40 hours per week. Fdgs. ¶ 11. Bott will serve as General Manager of his proposed station. Id. General Manager is the highest-level management position, with a substantial policy-making component, and is specifically cited by the Commission as a position placed at the highest level of integration credit. Policy Statement, supra, 1 FCC2d at 395. Having specified that the sole principal of the applicant will be the station's general manager, Bott must receive this level of integration credit. See Alexander S. Klein, Jr., supra, 86 FCC2d at 432 n. 41. Accordingly, Bott should receive 100% quantitative integration credit.

71. Bott's 100% quantitative credit is entitled to qualitative enhancement for his proposed relocation to Blackfoot and his substantial broadcast experience. Bott has stated that if his application is granted, he will move to Blackfoot. Fdgs. ¶ 12. Thus, Bott is entitled to a slight local residence enhancement credit for this future local residence. See Vacationland Broadcasting Company, Inc., 97 FCC2d 485, 495 (Rev. Bd. 1984). Furthermore, although broadcast experience is a factor of lesser enhancement value, Bott is entitled to enhancement for his extensive broadcast experience, which

ATTACHMENT 8

WITHDRAWN FROM ORAL ARGUMENT
PURSUANT TO LOCAL RULE 13(i)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT COURT

RADIO REPRESENTATIVES, INC.,

Petitioner,

vs.

FEDERAL COMMUNICATIONS COMMISSION

Respondent,

RICHARD P. BOTT, II,

Intervenor.

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No. 90-1227

RESPONSE TO
MOTION TO REMAND TO REOPEN THE RECORD

Richard P. Bott, II ("Bott"), Intervenor in the above-referenced appeal, by his attorneys and pursuant to Local Rule 7(d), hereby responds to the Motion to Remand to Reopen the Record filed herein by Radio Representatives, Inc. ("RRI"), Appellant. In support hereof, Bott states as follows:

1. In presenting its Motion, RRI argues to this Court that it has come upon new evidence that undercuts the integration credit heretofore awarded Bott by the Federal Communications Commission ("FCC"), thereby requiring a further evidentiary hearing. The evidence allegedly arises from the Initial Decision of an FCC Administrative Law Judge in a comparative hearing in which Bott was neither a party nor a witness. Raymond J. and Jean-Marie Strong, FCC 91D-3, released January 31, 1991 ("Strong"). From evidence related to the application to the FCC of Bott's father, Richard Bott, Sr., to build a new FM radio

station at Bartlett, Tennessee, RRI constructs a theory that Bott will not carry through on the integration pledges Bott has made to the FCC in the instant case.^{1/} This claim is wide of the mark.

2. In the first place, RRI's Motion is untimely filed and must be dismissed. As RRI admits, the standard for reopening a trial-type hearing is that the movant must have acted with due diligence to locate and submit its claims. Omaha TV 15, Inc., 4 FCC Rcd 730 (1988). RRI is seriously deficient in this regard.

3. The hearings in the Strong proceeding were conducted over the period from July 9 to 16, 1990. Raymond J. and Jean-Marie Strong, supra at ¶2. RRI has had seven months to study the transcripts of the hearings, draw its conclusions, and file a motion raising its allegations. It did not act expeditiously and, only now, with briefing completed and Court action expected in this case, does it submit its Motion. In failing to act with due diligence, RRI has waived its right to bring this Motion, frivolous as it may be.

4. Even assuming the Motion is entertained as timely filed, it relates to an issue that RRI did not pursue and is, therefore, moot. In neither its Exceptions to the FCC's Review Board, its Application for Review to the FCC (Joint Appendix at 262), or its appeal to this Court, did RRI raise any questions in

¹Interestingly, since Bott, Sr. did not receive the construction permit, he will not be moving to Bartlett and requiring a replacement for his present position. That eliminates any question that Bott has a restriction on his ability to relocate to Blackfoot.

regard to the validity of Bott's integration commitment. It is a fundamental tenet of administrative and judicial review that an argument that is not pursued is waived. Rogers Radio Communications Services, Inc. v. Federal Communications Commission, 751 F.2d 408, 413 n.14 (D.C. Cir. 1985); Fidelity Television, Inc. v. Federal Communications Commission, 515 F.2d 684, 696 (D.C. Cir.), cert. denied, 423 U.S. 926 (1975). Having waived its claims on this matter, by failing to pursue them below, RRI leaves no issue for the Commission to reopen. Thus, the Motion should be dismissed based on a waiver of the argument being made.

5. As for the substance of RRI's claim, it suffers from a fundamental flaw. The arguments made by RRI concerning Bott do not contain any evidence, either direct or hearsay, that directly involve Bott. Bott was not a witness in the Strong case and no witness in Strong claims to have spoken to Bott or attempted to describe his plans or intentions. RRI accuses Bott of not being truthful in his integration claims through testimony that does not even deal with what Bott has said or done. This is hardly the type of convincing, dispositive evidence that is required by the Commission to reopen its record. Omaha TV 15, Inc., supra. It is insufficient for any purpose other than to be rejected.

6. Appended hereto are the pages of the transcript of the Strong hearing that bear any relation to Bott. These transcript pages evidence a record far different from that presented by RRI. No question is asked of Bott, Sr. as to Bott's plans for

Blackfoot. No question is asked of the witness whether he has consulted with Bott in regard to Bott's plans to be integrated into the management of the Blackfoot station or other broadcast management positions. In fact, when the testimony turned to another application filed by Bott, for a new radio station at Olathe, Kansas,^{2/} Bott, Sr. testified that he was not aware of his son's plans (Tr. 1812):

Q. Well, let me ask you this first. Are you aware that your son Rich had applied for a new station in Olathe, Kansas? I'm not sure of the pronunciation, O-l-a-t-h-e.

A. Olathe.

Q. I'm unclear on what happened to the application.

A. I think it's still pending.

Q. It's still pending. Do you know if he plans to run that station as its General Manager?

A. I cannot speak for him. I honestly don't know.

Lastly, no question is asked whether any claims being made by Bott, Sr. are conditioned on Bott's Blackfoot plans.^{3/} In the absence of such questions, RRI is reduced to speculation, which

²This application was filed subsequent to the Blackfoot application and did not include an integration commitment. Bott dismissed the application at the time it was designated for comparative hearing.

³We submit that had testimony been elicited on this specific subject, that Bott, Sr. would have indicated that he was testifying as to his son's role in management only as of the time of the hearing. He would not have said that Bott's involvement would continue if and when the instant case reaches finality and Bott can construct the Blackfoot facility.

should not be permitted.

7. RRI cites (Motion, p.5) one portion of the Judge's decision as being dispositive of its claim. Therein, RRI provides emphasis to the Judge's statement that Bott will take over the family's business. However, the following colloquy from the trial transcript hardly supports such a conclusion (Tn. 1776):

Judge Kuhlmann: "But how are [you] going to leave all that behind and get off to Bartlett, Tennessee and do it?"

The Witness: "I think that he is ready now and would --"

8. It is painfully obvious that RRI has presented this Court with conjecture and surmise, not evidence as to any alteration in Bott's representations to the FCC. There simply is no record evidence that Bott's father offered any testimony undermining Bott's integration pledge in this case. In fact, no questions were raised in the Strong proceeding as to Blackfoot. All there is involves vague testimony as to Bott, Sr.'s plans. Nothing at all deals with the plans or intentions of Bott. A record devoid of this is not one on which to construct any conclusions, especially those that would continue a proceeding that started almost six years ago.

9. In order for a hearing to be held on any matter, there must be more than a mere factual dispute. The matter must, as RRI noted, be sufficient to affect the ultimate disposition of this case. Omaha TV 15, Inc., supra. Nothing presented by RRI rises to that level. As is obvious from the transcript, the

evidence presented by RRI raises no questions as to the truth and veracity of Bott. Rather, RRI's failure to introduce the transcript in connection with its Motion raises questions concerning an intention to delay resolution of this case. In that Bott has not wavered from his integration pledge and remains committed to move to Blackfoot and carry out his plan to construct and operate the new Blackfoot station, while RRI has failed to offer any evidence to the contrary, there is absolutely no basis for a remand. On the contrary, a decision affirming the Commission's action should issue at the earliest possible time.

WHEREFORE, it is respectfully requested that the Motion to Remand to Reopen the Record be denied.

Respectfully Submitted,

SEMMES, BOWEN & SEMMES

BY: 

Barry A. Friedman
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Suite 500
Washington, D.C. 20036
(202) 822-8250

Attorney for Richard P. Bott, II

Dated: February 19, 1991

Transcript of Proceedings

BEFORE THE
Federal Communications Commission

In the Matter of:

BARTLETT, TENNESSEE

Docket No. 89-606

DATE: July 16, 1990

PLACE: Washington, D.C.

VOLUME: 7

PAGES: 1700 - 1850

Capital Hill Reporting

Official Reporters
1825 K Street, N.W.
Washington, D.C. 20006
(202) 466-9500

1 BY MS. MAHONEY:

2 Q. Mr. Bott, going back to your statement in your
3 integration statement that you're currently semi-retired,
4 do you recall being asked, or when did you become semi-
5 retired?

6 A. That has been an evolving process. There has
7 not been a date or a time, it has just taken place.

8 Q. And when did that evolving process begin?

9 A. Again this answer is not traditional, but maybe
10 when I was 30 years old it has been an evolution.

11 Q. So you started the retirement process when you
12 were 30?

13 A. That's why the term is a little non-standard and
14 different in many times a person would use that term.

15 Q. Could you --

16 JUDGE KUHLMANN: Well, is this because Mr. Bott,
17 that you wouldn't have to work at all if you didn't want
18 to? You wouldn't have to do anything?

19 THE WITNESS: Your Honor, I have a little sign
20 where I shave every morning that says when your work is
21 work, you're in the wrong kind of work.

22 JUDGE KUHLMANN: No, my question is much more
23 functionally, you see, and less ethereal. If you decided
24 that you didn't want to do anything for Bott Broadcasting
25 today, tomorrow or ever again, could you do that if you

1773

1 wanted to? Would the company go right on?

2 THE WITNESS: That would be a matter of opinion.
3 I suppose within our family, wouldn't it.

4 JUDGE KUHLMANN: I don't know, that's what I'm
5 asking you.

6 THE WITNESS: In my opinion, I think I contri-
7 bute a lot and hopefully I do --

8 JUDGE KUHLMANN: But if you call up your son
9 Richard tomorrow, you said look, Richard -- is it Richard
10 that kind of runs things -- and you said to him I'm not
11 going to be able to do this anymore, I'm going to spend
12 most of my time taking trips to Disneyland, would you
13 then, could you do that if you wanted to?

14 THE WITNESS: He has a Harvard MBA and he would
15 probably --

16 JUDGE KUHLMANN: So he could take over if he
17 wanted to and you could tell him that if you wanted to.

18 THE WITNESS: That could be interpreted, yes,
19 that would be.

20 JUDGE KUHLMANN: You see, we have to have some-
21 thing fairly specific to deal with on the record here. Go
22 ahead, Ms. Mahoney.

23 BY MS. MAHONEY:

24 Q. Mr. Bott, do you recall at your deposition you
25 were asked to explain how the process that got you from 44

1 testimony in this proceeding is in paragraph through Bott
2 Broadcasting Company and its subsidiaries I control and
3 then you list the stations. If you had wanted to be the
4 full-time General Manager at any one of those stations in
5 the last ten years, you could have been, couldn't you?

6 A. It would have been difficult to have been the
7 full-time General Manager at a station considerably apart
8 from my residence.

9 Q. Well, there were stations that you controlled
10 right in the same community as your residence, were there
11 not; at least one?

12 A. It would have been impossible to have been the
13 full-time General Manager of the station where I have a
14 residence and continued to devote the time to Bott Broad-
15 casting Company as a whole that I have done.

16 Q. But your son Richard could have taken on some of
17 those duties?

18 A. As a matter of evolutionary process also, he's a
19 very young man and this has happened also over a period of
20 years, his ability to do that. I would say now he could
21 much more easily than he could have up until recently.

22 JUDGE KUHLMANN: Well, when do you think he was
23 ready to take over what he does now or what you think he
24 could do now?

25 THE WITNESS: I think the business of radio he

45

1 does very well, I'm not sure the philosophy, the nature of
2 radio, the idea of communications and interaction with the
3 community. The service of radio is something I think only
4 a person only really has a taste for through experience
5 and doing it, little by little.

6 JUDGE KUHLMANN: And only you could do that?

7 THE WITNESS: That's been the thing that got me
8 involved in radio in the first place and the thing that
9 I've loved right along.

10 JUDGE KUHLMANN: But how are going to leave all
11 that behind and go off to Bartlett, Tennessee and do it?

12 THE WITNESS: I think that he is ready now and
13 he would --

14 JUDGE KUHLMANN: Oh, he would do both now?

15 THE WITNESS: Yes.

16 JUDGE KUHLMANN: Okay, so if you wanted to
17 tomorrow morning you could go over to the Oberlin Park
18 station, for example, and start being the General Manager
19 there? In fact you're looking for somebody right there
20 now anyway?

21 THE WITNESS: Yes, sir.

22 JUDGE KUHLMANN: You could do that if you wanted
23 to.

24 THE WITNESS: If I wanted to continue living in
25 Kansas City.

1 Q. Does he receive any kind of salary from you
2 personally?

3 A. No.

4 Q. Now, when he did the inquiry as to the cost
5 estimates for your personal station, he did that as your
6 employee; is that correct?

7 A. Yes.

8 Q. So basically he did that as an employee of Bott
9 Broadcasting Company?

10 A. I would say he probably did that as my son. He
11 was not paid for that and his notes were handwritten on a
12 piece of paper.

13 Q. I'd like to direct your attention to your depo-
14 sition testimony at page 123. Starting at line two you
15 were asked, in the preparation of your application for
16 Bartlett, did you receive any assistance from any members
17 of your family and what was your response?

18 A. Yes.

19 Q. And then you were asked, okay, which members and
20 what form of assistance. Could you read your response,
21 please?

22 A. I asked Rich to do some initial inquiry as to
23 equipment needs as my employee, someone under my employ
24 and he did so.

25 Q. I notice an amendment to your application.

1 Well, let me ask you this first. Are you aware that your
2 son Rich had applied for a station in Olathe, Kansas? I'm
3 not sure of the pronunciation, O-l-a-t-h-e.

4 A. Olathe.

5 Q. I'm unclear on what happened to that applica-
6 tion.

7 A. I think it's still pending.

8 Q. It's still pending. Do you know if he plans to
9 run that station as its General Manager?

10 A. I cannot speak for him. I honestly don't know.

11 Q. You don't know. But he is right now Vice
12 President and General Manager of Bott Broadcasting?

13 A. Yes.

14 Q. Do you have any -- I just want to make the
15 record clear. You said you were not sure whether you
16 continue to retain a salary at Bott Broadcasting Company.
17 Is it fair to say that you have no plans at this point to
18 stop your salary at Bott Broadcasting Company?

19 A. No plans at what point.

20 Q. At this point, today.

21 A. No, it's fair to say I have no plans to do that.

22 Q. When did you decide to become integrated full
23 time at your proposed Bartlett station and move to
24 Bartlett if your application was granted?

25 A. I think in our own mind, my mind and certainly

CERTIFICATE OF SERVICE

I, Barry A. Friedman, do hereby certify that I mailed this
19th day of FEBRUARY, 1991, a copy of the foregoing
"Response to Motion to Remand to Reopen the Record" by first-
class mail, postage pre-paid, to the following:

David Silberman, Esquire
Federal Communications Commission
Office of the General Counsel
Room 614
1919 M Street, N.W.
Washington, D.C. 20554

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Barry A. Friedman